IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7982 OF 2005

1. Dr. Neelkanth Namdeo Misal
2. Shri. Vaibhav Arvind Shah ...Applicants

Vs.

The State of Maharashtra ...Respondent

ALONGWITH

CRIMINAL APPLICATION NO.7983 OF 2005

Dr. Neelkanth Namdeo Misal ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri R.V. More for the Applicants in both the Applications.
Mrs S.D. Shinde, A.P.P. for the State in both the Applications.

CORAM : S.C. DHARMADHIKARI, J.
DATE : DECEMBER 20, 2005.

P.C.:

1. Heard Shri More appearing for the Applicants and Mrs Shinde, A.P.P. for the State. The Applicants are accused in C.R.No.58 of 2005 registered at Umadi Police Station. The offences alleged are punishable under section 420 read with section 34 of the Indian Penal Code.

2. The complainant who is serving in Zilla Parishad alleges that first Applicant is founder of Maharashtra Council of Alternative System of Medicines in Chass, District Ahmednagar. The Applicant No.2 is founder member of Vardhaman Education of Medical

Association. It is alleged that the institutions are run without approval of Maharashtra government. They are bogus. It appears that initially an Application for Anticipatory Bail was preferred but a statement is made that no C.R. is registered. A direction came to be issued that seventy-two hours advance notice would be given to the Applicants in the event police desires to arrest them.

3. The contention of Shri More appearing in support of these Applications is that the institutions are affiliated to N.B. University of Calcutta. It is deemed university as per schedule of Central Government. This university has granted affiliation to the institution and letters are issued to that effect. However, as far as the State of Maharashtra is concerned, it has been doubting the credentials of the Applicants to manage and administer such courses, more particularly, when such courses are being continued without approval from the Maharashtra University of Health Sciences. The State’s policy appears to be that only such institutions which are either approved or affiliated to the aforesaid university or recognized by the Central Government can impart education in such courses. It is, therefore, alleged that such courses are being continued without

any permission and the students are duped as huge amounts are collected from them.

4. In my view, the entire matter is based upon the recognition and or approval/permission for conducting such courses in Alternate medicine. The issue in such circumstances for consideration is whether course in alternate medicine can at all be conducted and even if the same is authorised or recognized by Central Government or any Deemed University, imparting training therein and conferring degrees, is something per se illegal and amounts to an offence in law. Unless and until that issue is determined, it cannot be said that the act of the Applicants in collecting fees from few students and imparting training in such courses is punishable as an offence of cheating under Indian Penal Code. That apart, both the Applicants are deeply rooted in society. They are doctors and have permanent place of residence. It is a trust of which they are office bearers, and that conducts this course. Therefore, documents and records can always be seized from the premises of the Trust. Custodial interrogation of the Applicants is not necessary. Hence, the following order:

CRIMINAL APPLICATION NO.7982 OF 2005

i) In the event of the arrest of the Applicants in connection with C.R.No.58 of 2005 of Umadi Police Station, District Sangli, the Applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- each with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicants will attend the concerned Police Station as and when summoned.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The Applicants shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicants only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

CRIMINAL APPLICATION NO.7983 OF 2005

i) In the event of the arrest of the Applicant in connection with C.R.No.152 OF 2005 of Vita Police Station, District Sangli, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station as and when summoned.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make

any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE